IN THE HIGH COURT OF DELHI

RSA No. 109/2005

Maman Singh ..... Appellant
! through: Mr.Deepak Sharma, Advocate

VERSUS

$ Smt.Sharbati Devi
(since deceased) & Ors. ..... Respondents
^ through: Mr.Vijay Kinger, Advocate for R-1 to 6 & 8.

% DATE OF DECISION: 3.12.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.** (ORAL)

1. Learned counsel for the parties state that they are not prepared to argue the matter and request for an adjournment.

2. Request for adjournment is declined for the reason case after case listed in my court shows that save and except seeking adjournment, counsel are not cooperating. First appeals and second appeals pertaining to the year 1980 are pending consideration. In the instant RSA, no question of law has been framed till date.

3. Appellant is the landlord. Respondents are the legal heirs of one Shiv Lal. Stand of the appellant is that the children of Shiv Lal were not tenants under him and were illegally occupying the tenanted premises. According to the appellant, Shiv Lal was a tenant under him and he executed a will dated 27.1.1999 bequeathing the tenanted premises in favour of the appellant directing his son Om Prakasah to vacate the tenanted premises.

4. Om Prakash had filed a petition under Section 45 of Delhi Rent Control Act alleging that he is a tenant under the appellant and prayed that the electricity connection illegally disconnected to his tenanted premises by the appellant be restored. He claimed that he was paying rent @ Rs.50/- per month to the appellant.

5. It appears that there were some proceedings pending before the learned Additional Rent Controller. The impugned order do refer to some proceedings but did not clarify what they were. Be that as it may, the learned Additional Rent Controller held that Om Prakash had successfully established that he was a tenant under the appellant. Two orders were passed on 16.11.1991 and 23.11.1996. Appeals were filed. During pendency of the appeals before the Rent Control Tribunal appellant made a statement accepting Om Prakash as his tenant provided Om Prakash paid to him rent @ Rs.100/- per month

w.e.f. 1.1.1991. Subsequently, appellant filed an application to withdraw the afore-noted statement. The application was allowed. On 2.12.1997 final orders were passed holding in favour of Om Prakash.

6. Appellant filed a suit for declaration praying that orders dated 16.11.1991, 23.11.1996 and 2.12.1997 be declared a nullity. He alleged that the counsel engaged by him joined hands with Om Prakash and did not conduct the trial in a proper manner. That all the orders were obtained by playing fraud on the court. Suit was dismissed vide order dated 2.5.2000. Appeal filed by the appellant was dismissed on 28.9.2004.

7. Both courts have noted a relevant fact. The relevant fact was that after orders were passed in the petition filed by Om Prakash, appellant withdrew an eviction petition filed by him seeking ejectment of Om Prakash.

8. Fraud alleged is not a fraud on the court. Thus, the earlier decrees cannot be challenged by way of subsequent suit.

9. Even otherwise as held in the decisions reported as 2004 (2) CCC 462, *Gopal Lal Vs. Babu Lal* and 1993 (3) RCR 685 *Banwari Lal Vs. Smt.Chando Devi* court upon which fraud is played is the court which has to be moved for setting aside its orders.

10. No question of law arises.

11. The appeal is dismissed.

12. No costs.

December 03, 2007 **PRADEEP NANDRAJOG, J.**
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